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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,477	08/01/2006	Jens Foegler	04/004 K	6689
38263 7590 08/27/2009 PROPAT, L.L.C. 425-C SOUTH SHARON AMITY ROAD CHARLOTTE, NC 28211-2841				
			EXAMINER JACOBSON, MICHELE LYNN	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 08/27/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/588,477

**Applicant(s)**

FOEGLER ET AL.

**Examiner**

MICHELE JACOBSON

**Art Unit**

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-16 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-16 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/17/09 has been entered.

***Examiner Notes***

2. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, 7, 10-12, 13, 15-16, 18, 19 and 20 are rejected under 35

U.S.C. 102(b) as being anticipated by Ito et al. European Patent Application Publication No. 408164 ((hereafter referred to as Ito).

5. Ito teaches a water-resistant matrix web with a food flavoring material disposed on it comprising food flavoring material dispersed on a binder material. (Pg. 2, lines 27-30) The water resistant matrix web is recited to be comprised of natural or artificial fiber materials such as polymers of cellulose and other natural materials (viscose, acetate, etc), polyester, polyamide, polyethylene, polypropylene and viscose coated Manilla paper. (Pg. 2, lines 37-44, 56) Webs produced from such natural or artificial fibers are interpreted by the examiner to read on the textile and consolidated nonwoven support layers recited in claim 1 since the web is made out of fibers which is the definition of a textile and is nonwoven as recited.

6. The food layer is recited to include herbs, pepper, cheese powder and powders of vegetable extracts. (Pg. 3, lines 8-17) The binder layer for the flavoring material is recited to be comprised of polysaccharides such as starch, modified starch, carboxymethylcellulose and protein such as gelatin. (Pg. 3, lines 22-28) The selection of these materials is recited to result in the food layer being neatly transferred onto the surface of the food disposed in a casing made of such a laminate.

7. The laminate is produced by applying a solution of the binder layer material to the matrix web followed by applying the food layer material in a powdery, granular or chip form onto the coated web and drying the thus formed sheet material. The formed sheet may then be formed into a tube for use as a sausage casing by heat sealing the

film or by joining the edges of a non-heat-sealable film with the aid of an adhesive tape. (Pg. 3, lines 33-42) When the sheet is brought into contact with a web substrate food, the food material is transferred from the matrix to the substrate food, thus effectively flavoring or spicing the food. (Pg. 4, lines 7-9)

8. Ito anticipates the adhesively longitudinally seamed sausage casing comprising an edible, essentially water-insoluble, flavor transferring layer comprising gelatin or starch and a flavoring such as herbs, pepper or vegetable flavoring supported on a fibrous matrix comprising natural or synthetic fibers such as cellulose, polyester, polyamide and polyolefin recited in claims 1-4, 6, 7, 10, 11, 15, 16, 18 and 19 produced by the method recited in claims 12, 13 and 20.

9. Regarding claim 13 the examiner notes the recitation of the plasticizer is optional and therefore although Ito fails to recite the disposition of plasticizer in the flavor transfer layer disclosed, Ito still anticipates the non-optional limitations of claim 13.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4, 6-16 and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. European Patent Application Publication No. 408164

((hereafter referred to as Ito) and Barmore et al. U.S. Patent Application Publication No. 2001/0008658 (hereafter referred to as Barmore)).

12. Ito teaches what has been recited above but is silent regarding the textile support further comprising a barrier layer and a water soluble layer between the textile support and the transfer layer.

13. Barmore teaches a packaging film comprising a first thermoplastic layer which can be coated with a second edible film layer which is transferred to a product during cooking comprising a binder, an additive, a crosslinking agent and a plasticizer. (Para. 8, 11, 196) The film is adhered to the meat product such that upon removing the film from the meat product, the edible film layer remains adhered to the meat product. (Para. 33) The presence of the plasticizer renders the dried composition more flexible, while the binder and the crosslinking agent provide cohesion of the coating. (Para. 196) Additionally, the nature of the binder along with the crosslinking agent is believed to control the rate of hydration of the coating allowing the coating to remain intact against the flow of high moisture meat product. (Para. 196)

14. The additive may comprise caramel, natural colorant, spice or citrate. (Para. 12) The binder may comprise a first binder including alginate, methyl cellulose and hydroxypropyl starch and a second binder comprising materials including albumin, zein, carageenan, casein, soy protein or wheat protein. (Para. 16)

15. The packaging film preferably further comprises a third layer between the first and second layer comprising the materials such as alginate and hydroxypropyl starch to serve as a release layer. (Para. 23) The packaging film of the invention is also recited

to comprise a layer which serves as a barrier to oxygen. (Para. 28) The laminate of the invention is recited to be useful for production of casings such as fin-sealed, lap-sealed and butt-sealed casings for meat products. (Col. 32)

16. Both Ito and Barmore are directed towards laminate films for transferring edible films to packaged meat products comprising polysaccharides and proteins. One of ordinary skill would have been motivated to substitute the coating material recited by Barmore for the coating material disclosed in Ito because of the cohesion and flexibility provided by the crosslinking agent and plasticizer respectively. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the flavor transfer layer of Barmore for the flavor transfer layer disclosed in Ito. This substitution would have yielded the predictable result of producing a textile support based sausage casing comprising an edible flavor transfer layer with better properties of cohesion and flexibility than that of the film recited by Ito by virtue of the crosslinker and plasticizer. "In *United States v. Adams*, . . . [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." *KSR*, 550 U.S.at \_\_\_, 82 USPQ2d at 1395.

17. The obvious substitution of the coating disclosed by Barmore for the transfer coating recited by Ito would have produced the same invention as claimed in claims 1-4, 6, 7, 10, 11, 13, 15, 16, 18, 19 and 22 produced by the method recited in claims 12, 13 and 20.

18. Regarding claims 8, 9 and 14: Barmore clearly discloses utilizing an oxygen barrier layer for the food packaging film recited. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included an oxygen barrier layer in the laminate disclosed by Ito to prevent degradation of the packaged food by oxygen. Since the barrier layer would obviously not be transferred to the packaged food, one of ordinary skill would have provided it on the support layer recited by Ito prior to coating the support with the transfer layer. This obvious utilization of a barrier layer would have produced the invention claimed in claims 8 and 9 produced by the method claimed in claim 14.

19. Regarding claims 23 and 24: Barmore clearly recites employing a release layer comprising water soluble materials such as alginate and hydroxypropyl starch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included this release layer when employing the edible film recited by Barmore to provide a release layer in the invention of Ito. Such an application of a known film would have produced the same invention claimed in claims 23 and 24.

### ***Response to Arguments***

20. Applicant's arguments filed 7/17/09 have been fully considered but they are not persuasive.

21. Applicant has asserted on page 8 of the remarks that Ito "does not teach of suggest the recited coatings comprising a mixture of edible binder and solids or

flavoring" because as asserted by applicant "mixtures are generally defined as two or more different substances which are mixed together, but not combined chemically". However, applicant has not presented arguments that distinguish between the structural characteristics of the film recited by Ito in which the flavor substance is embedded and the film recited by applicant to be a mixture. The examiner has broadly interpreted the term "mixture" to mean that the flavor component is disposed within the edible binder. Although Ito does not disclose mixing the components prior to coating, the coating produced is a mixture of edible binder and flavor component. Applicant has asserted that the "dusting" method recited by Ito "can not be imputed to mean "mixing". Nonetheless, applicant's claims do not recite a method step of "mixing" the edible binder and the flavor component. Since applicant has failed to provide any substantive arguments proving that a layer comprising the flavor component embedded in the binder recited by Ito is materially or structurally different from a layer in which the flavor component has been mixed into the binder prior to coating, the examiner is not persuaded that Ito does not anticipate the coating recited by applicant.

22. Applicant asserts on page 9 of the remarks that Ito requires "water soluble resins" and fails to "teach or suggest such coatings that are essentially water-insoluble". However, Ito teaches binder components which are the same as recited by applicant to be essentially water insoluble, so it is unclear to the examiner how these materials would not inherently be "essentially water-insoluble". Applicant has asserted that the specification as filed clearly defines the term "insoluble" to mean "a layer that 'remains essentially intact even after the action of moisture'. However, the passage recited by

applicant defines the term "slightly water-soluble" not the term "insoluble". Additionally, applicant's claim recites the limitation "**essentially** water-insoluble". Applicant has not provided a definition for the limitation "**essentially** water-insoluble" and therefore, it is unclear how insoluble something would need to be in order to be considered "essentially water-insoluble". Furthermore, *in arguendo*, the stated definition were present in the specification, it is unclear how intact a film would need to remain after the action of moisture to be considered "*essentially*" intact. Applicant has failed to show that the materials recited by Ito would behave in a manner different from that claimed by applicant and therefore applicant's assertion that the binders of Ito would not be "essentially insoluble" is not found persuasive.

23. Applicant asserts on page 9 of the remarks that Ito requires a "two-layered" transfer mechanism. However, the flavor component embedded in the binder material is interpreted by the examiner to comprise a single layer. The embodiment shown in Fig. 1 does not negate the disclosure in Ito that the flavor component is pressed in the binder layer.

24. Applicant's arguments on page 9 of the remarks regarding the perceived deficiencies of Ito to anticipate claims 22-24 are addressed above.

25. Applicant's arguments on pages 10 and 11 of the remarks regarding Niaura are moot since that ground of rejection has been withdrawn.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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